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Brief  
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V. Watt

PATENT APPLICATION  
THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:  
Martin Brady

Serial No.: 09/228,109

Filed: January 11, 1999

Examiner: Douglas D. Watts

Docket No.: 0166

Art Unit: 3724

For: HOUSEHOLD KITCHEN OPENING APPLIANCE

Assistant Commissioner for Patents  
Washington, D. C. 20231

APPELLANTS' BRIEF

Sir:

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### APPELLANTS' BRIEF

This is an appeal from an examiner's action dated March 1, 2000, finally rejecting claim 10 as being fully anticipated under 35 U.S.C. §102(b) and claims 11-13 as being unpatentable under 35 U.S.C. § 103(a).

#### I. Real Party in Interest

The real party in interest is Hamilton Beach/Proctor-Silex, Inc., which has a principal place of business in Glen Allen, Virginia.

#### II. Related Appeals and Interferences

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

#### III. Status of Claims

A total of 12 claims have been submitted. Of these, claims 1, 2 and 6 have been canceled; claims 3-5 and 7-9 allowed; and claims 10-13 finally rejected.

#### IV. Status of Amendments

There have been no amendments filed subsequent to the final rejection.

**V. Summary of Invention**

With reference to FIGS. 1 and 2, this invention provides a household kitchen opening appliance 10, shown mounted to the underneath side of a kitchen cabinet 12 by a mounting arrangement 14. (Page 3, lines 21-24) The appliance 10 includes a housing 16 (Page 4, lines 6-8) that comprises a front portion 20 and a rear portion 22 mated together to partially enclose and carry a can opener assembly 18. (Page 4, lines 8-13) Front portion 20 and rear portion 22 of the housing 16 cooperate to define a front wall 23A, a rear wall 23B, two side walls 23C, and a bottom wall 23D. (Page 4, lines 13-15)

Referring to FIGS. 3 and 6, the appliance 10 has a downwardly-open, vertically-extending, scissors-receiving sheath, generally designated 50, for a scissors, such as scissors 52. (Page 5, lines 14-18) The sheath 50 is formed by the rear wall 23B of the housing 16 and a cover member 54 connected to the rear wall 23 by screws 56. (Page 5, lines 18-20) A scissors holder or clamp 58 comprising a pair of cooperating spring metal clamp members 60 and 62, mounted by screws 64 respectively on the housing rear wall 23B and the cover member 54, releasably retain the scissors 52 within the sheath 50 when the scissors 52 are inserted upwardly from below the appliance 10. (Page 5, line 20)

to Page 6, line 1.

A jar opener, generally designated 70, mounted on the bottom wall 23D of the housing 16, includes a pair of elongate stainless steel plates 74 and 76 which extend at an acute angle outwardly from the rear to the front of the bottom wall 23D. (Page 6, lines 2-7). The plates 74 and 76 are clamped to respective support pads 78 and 80 formed on the housing bottom wall 23D, by respective clamp plates 82 and 84. (Page 6, lines 7-9) The steel plate 76 has a series of saw teeth 86 along its exposed edge for gripping the edge of a jar lid. (Page 6, lines 9-11) As evident, and as indicated by phantom lines in FIG. 6, a jar (not shown) with a lid 90, may be pressed upwardly against the housing bottom wall 23D and rearwardly into firm engagement with the stainless steel strips 76 and 78 and then rotated to loosen the lid 90. (Page 6, lines 11-15)

#### VI. Issues

The issues before the Board are: (1) whether claim 10 of this application is unpatentable under 35 U.S.C. §102(b) because anticipated by either a Presto manual (Ref. AU) or United States Patent No. 3,730,391, to O'Bannon; and (2) whether claims 10 through 13 of this application are unpatentable under 35 U.S.C. §103 because unpatentable over the Presto manual in view of

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United States Patent No. 4,984,368, to Hoover et al. and United States Patent No. 2,027,785, to Rauh.

### VII. Grouping of Claims

For purposes of this appeal, claims 10 through 13 stand or fall together.

### VIII. Argument

#### A. The Prior Art.

The Presto manual, also identified in the record of this application as "Ref. AU," which bears a copyright date of 1989, is titled "Under Cabinet Automatic Can Opener Plus" and, among other things, describes and shows the operation of a jar opener recessed in the bottom of a can opener housing. See page 8 and Fig. J of the Presto manual.

United States Patent No. 3,730,391, granted to O'Bannon on May 1, 1973, shows a conventional electrically operated can opener A including a housing B which has a projecting portion 16.

United States Patent No. 4,984,368, granted to Hoover et al. on January 15, 1991, shows an emergency scissors 10 for cutting through a jammed seat belt. In FIGS. 1 and 2, the scissors can be held in a sheath 28 having a pouch 30 that can be attached to an interior surface, such as a motor vehicle dashboard, by hook

and loop pile fastener strips 34. Optionally, as shown in FIG. 3, the scissors 10 can be mounted by an L-shaped bracket 38 to a seat belt buckle in position to immediately cut through the seat belt.

United States Patent No. 2,027,785, granted to Rauh on January 14, 1936, in FIG. 3, shows a shears engaged with a screw cap of a container. FIG. 3 appears to show teeth 5 and 6 engaged with a container cap 7 but there is no description of these parts in Rauh, beyond the brief description of FIG. 3 on page 1, column 1, lines 15 and 16.

B. Claim 10 is not fully anticipated by the Presto manual.

Claim 10 includes an electric can opener "having a housing and a scissors holder on said housing capable of releasably retaining a scissors on said housing." The Presto manual does not disclose a scissors holder and, therefore, does not anticipate claim 10.

The examiner has argued, in effect, that any upwardly-facing surface of a housing constitutes a scissors holder capable of releaseably retaining a scissors on the housing. However, the art is devoid of any suggestion, aside from the examiner's hindsight conclusion, that any such holder exists on the Presto



can opener.

C. Claim 10 is not fully anticipated by the O'Bannon patent.

O'Bannon also does not disclose a scissors holder and, therefore, does not anticipate claim 10.

Here the examiner seems to argue that the projecting portion 16 of the O'Bannon patent, which appears to provide a knife sharpener, is in reality a scissors holder. Such is certainly not taught by O'Bannon.

D. Claims 10 through 12 are not unpatenable over the Presto manual in view of Hoover et al. and Ruah.

The failure of the Presto manual to disclose a scissor's holder on a can opener housing is evident. The Presto manual does disclose a jar opener on a can opener. Ruah's shears add nothing useful to the Presto can opener. The Hoover et al. arrangements for making a scissors easy to get to for cutting a motor vehicle safety belt in an emergency suggests nothing useful relative to can openers. The examiner cannot establish obviousness resulting from a combination of references "absent some teaching or suggestion supporting the combination." ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984) That the examiner proposes to combine these references is further evidence of the improper

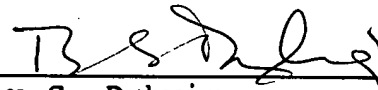
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hindsight analysis that the examiner has employed in this case.  
See W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220  
USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851  
(1984).

IX. Summary

For the foregoing reasons, the examiner's action in  
rejecting claims 10 through 13 should be reversed.

Respectfully submitted,



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X. Appendix A

Claims on Appeal

10. A household opening appliance comprising an electric can opener having a housing and a scissors holder on said housing capable of releasably retaining a scissors on said housing.

11. The appliance of claim 10 further comprising a sheath for a scissors on said housing.

12. The appliance of claim 10 further comprising a jar opener mounted on the bottom wall of said housing.

13. The appliance of claim 12 further comprising a sheath on said housing for a scissors.



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X. Appendix A

Claims on Appeal

10. A household opening appliance comprising an electric can opener having a housing and a scissors holder on said housing capable of releasably retaining a scissors on said housing.

11. The appliance of claim 10 further comprising a sheath for a scissors on said housing.

12. The appliance of claim 10 further comprising a jar opener mounted on the bottom wall of said housing.

13. The appliance of claim 12 further comprising a sheath on said housing for a scissors.